

Message Text

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C O N F I D E N T I A L BERN 1406

DEPARTMENT PLEASE PASS TREASURY FOR INTERNATIONAL TAX COUNSEL;
PARIS FOR STERLING POWERS, IRS REPRESENTATIVE

E. O. 11652: GDS

TAGS: CFED, EFIN, US, SZ

SUBJ: US- SWISS TAX TREATY: RAY RYAN CASE

REF: BERN' S 3393, NOVEMBER 27, 1971

SUMMARY. LOCHER, DIRECTOR OF SWISS TAX ADMINISTRATION, HAS GIVEN US PAPER RELATING TO IRS COMPETENT AUTHORITY LETTER OF NOVEMBER 10, 1972, WHICH REVIEWS CASE, ASSERTS REQUEST EXCEEDS UNDERSTANDINGS REACHED IN JUNE 1971 AND TERMS OF ARTICLE XVI(3) OF US- SWISS TAX TREATY AND INDICATES IRS SHOULD WITHDRAW REQUEST AND RESTUDY QUESTION. LOCHER SUGGESTS ANOTHER MEETING ON RYAN CASE AT WHICH HE WOULD ALSO WANT TO DISCUSS US CONCEPT OF " PROTECTIVE ORDERS." MAY 7-9 OR AFTER MAY 22 ARE OPEN ON HIS SCHEDULE. END SUMMARY.

1. ON APRIL 4, DR. KURT LOCHER, DIRECTOR OF SWISS TAX ADMINISTRATION, GAVE EMBASSY OFFICER AND IRS REGIONAL REP, FROM PARIS, PAPER TITLED " OBSERVATIONS" RELATING TO IRS COMPETENT AUTHORITY LETTER OF NOVEMBER 10, 1972 ON RAY RYAN CASE. LOCHER SAID PAPER IS BEING HELD WITHIN GOVERNMENT BY SWISS AND ASKED FOR SIMILAR TREATMENT BY US. COPIES OF PAPER BEING FORWARDED BY IRS REP.

2. IN SUMMARY, PAPER REVIEWS RAY RYAN CASE SINCE INITIAL IRS COMPETENT AUTHORITY LETTER OF OCTOBER 16, 1969 TO DATE, NOTING THAT SWISS FEDERAL COURT DECISION OF DECEMBER 23, 1972 ESTABLISHED BASIS FOR PROVISION OF INFORMATION PURSUANT TO ARTICLE XVI
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OF US- SWISS TAX TREATY. PAPER NOTES LOCHER- COHEN MEETING OF JUNE 21-22, 1971 AND PROCEDURES SUBSEQUENTLY DEVELOPED BY SOMMERS BROWN AND SWISS TAX OFFICIALS TO BE FOLLOWED BY SWISS TAX ADMINISTRATION IN ORDER TO PUT EVIDENCE IN ADMISSIBLE FORM FOR US COURTS. (SEE BERN' S 1500, JUNE 24, 1971, AND 1521-1525, JUNE 28, 1971 .) PAPER REVIEWS PROCEDURES AND QUESTIONS SPECIFIED IN IRS COMPETENT AUTHORITY LETTER OF NOVEMBER 10, 1972 AND COMES TO THE CONCLUSION THAT THIS REQUEST EXCEEDS THE UNDERSTANDING REACHED

IN JUNE 1971, AS WELL AS THE LIMITATIONS ARISING OUT OF ARTICLE XVI(3) OF THE US- SWISS TAX TREATY. IN CIRCUMSTANCES THE VIEW IS STATED THAT: " IT WOULD THEREFORE BE WISE TO SUGGEST TO THE IRS TO WITHDRAW THE COMPETENT AUTHORITY LETTER OF NOVEMBER 10, 1972, AND RESTUDY THE QUESTION," AS WELL AS TO MEET WITH IRS REPRESENTATIVES FOR FURTHER DISCUSSION OF CASE.

3. IN HIS ORAL COMMENTS, LOCHER NOTED THAT THIS PAPER IS " NEITHER AN OFFICIAL NOR A FORMAL RESPONSE," BUT RATHER INDICATES THE SORT OF RESPONSE THAT WOULD HAVE TO BE MADE IF THE IRS PRESSED THE SWISS TAX ADMINISTRATION TO MAKE A FORMAL REPLY. ASKED FOR HIS VIEWS ON THE PROBABLE OUTCOME IF THE IRS INSISTED THAT ITS COMPETENT AUTHORITY LETTER OF NOVEMBER 10, 1972, BE REGARDED AS SATISFYING REQUIREMENTS OF PARA 1 OF SUMMARY OF DISCUSSIONS OF JUNE 1971, DR. LOCHER INDICATED THAT SWISS TAX ADMINISTRATION WOULD BE OBLIGED, PURSUANT TO PARA 2 OF THE SUMMARY, TO APPROACH COMMERCIAL CREDIT BANK. HOWEVER, LOCHER ADDED THAT IT WOULD ALSO BE NECESSARY TO SEND REQUEST TO THE OTHER BANKS THROUGH WHICH FUNDS PASSED IN RYAN CASE AS WELL AS PARTIES REFERRED TO IN DOCUMENTS SOUGHT AS EVIDENCE. HE WAS CERTAIN THAT CASE WOULD BE SENT AGAIN TO SWISS FEDERAL COURT, A DEVELOPMENT WHICH WOULD NOT ONLY LEAD TO A TURNDOWN IN THIS TAX CASE BUT WOULD ALSO HAVE DAMAGING CONSEQUENCES FOR PROPOSED US- SWISS JUDICIAL ASSISTANCE TREATY.

4. UNDER FURTHER QUESTIONING, LOCHER INDICATED THAT HE NOT ONLY OBJECTS TO CONCEPT OF CROSS- INTERROGATORIES (ATTACHMENT " F" TO THE COMPETENT AUTHORITY LETTER) BUT ALSO TO INTERROGATORIES IN ATTACHMENT " D" THAT GO BEYOND THE UNDERSTANDINGS REACHED IN JUNE 1971. HE NOTED THAT ARTICLE XVI(3) OF THE US- SWISS TAX TREATY PRECLUDES SUCH QUESTIONING SINCE IT IS NOT PERMITTED UNDER SWISS LAW.

5. IN ADDITION TO DISCUSSING RYAN CASE AT PROPOSED MEETING, DR.
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LOCHER SAID THAT HE WOULD ALSO WANT TO DISCUSS THE FORM AND EFFECTIVENESS OF " PROTECTIVE ORDERS" ISSUED BY A US COURT. ALTHOUGH THE SWISS FEDERAL COURT AND THE SWISS TAX ADMINISTRATION HAD BEEN CAREFUL TO PRESERVE THE ANONYMITY OF THE PARTIES AND BANKS INVOLVED IN THE RYAN CASE, BOTH IN THE DECISION HANDED DOWN BY THE FEDERAL COURT IN DECEMBER 1971 AND IN THE MANNER IN WHICH THE SWISS COMPETENT AUTHORITY LETTER OF APRIL 19, 1971 WAS DRAFTED, DEVELOPMENTS IN THE TAX COURT ON THE RYAN CASE HAD VIOLATED THIS ANONYMITY.

6. WITH RESPECT TO THE TIME FOR THE PROPOSED MEETING, DR. LOCHER SAID HE WOULD BE AVAILABLE MAY 7-9. HE WILL BE AWAY MAY 10-22, BUT WOULD BE PREPARED TO MEET THEREAFTER WITH US OFFICIALS. HE IS FREE THE WEEK OF JUNE 4.
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